

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re: Mark J. Criscuolo

Debtor.

Case No: 09-14063-SSM
Chapter 13

MOTION AND MEMORANDUM TO APPROVE
PROPOSED LOAN MODIFICATION AGREEMENT

Mark J. Criscuolo, the debtor in the above-captioned case, (“Debtor”), by counsel moves this Honorable Court to approve a loan modification agreement (“Loan Modification Agreement”) with secured creditor Suntrust Mortgage, Inc. (“Suntrust”) pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”). In support thereof, states with particularity:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334.
2. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157.
3. The relief sought with this Motion is premised on section 363 of the Bankruptcy Code.

Background

4. The Debtor filed a chapter 13 petition on May 21, 2009 [doc. 1].
5. On the date of the filing to the present, the Debtor owned the property at 14416 Clubhouse Road, Gainesville Rd, 20155 (“Property”).

6. Suntrust holds a first deed of trust on the Property with a principal balance of \$467,930.88 as of December 10, 2009.
7. A first Chapter 13 Plan and Related Motions (“Plan”) was filed on June 2, 2009 [doc. 15].
8. A confirmation hearing was held on September 9, 2009, where the Court entered an Order denying confirmation of the Plan (“Denial Order”). [doc. 37].
9. An Order dismissing the instant case was improvidently and erroneously entered on September 24, 2009 [doc 41] (“Dismissal Order”).
10. Suntrust Mortgage halted its loan modification process upon the receipt of the Dismissal Order.
11. The loan modification is a central and integral aspect of the Debtor’s attempt to reorganize effectively.
12. The Court conducted a hearing on October 28, 2009 on the Debtor’s Motion For Miscellaneous Relief: (A) Reconsideration Of Denial Of Confirmation Or Alternatively (B) An Extension Of Time To File A Modified Chapter 13 Plan [doc. 45] and granted an extension to file a new chapter 13 Plan by December 31, 2009 [doc. 51].
13. The Loan Modification Agreement (attached as Exhibit) was drafted and proposed on December 10, 2009.

Basis for Relief

14. The Court is permitted to grant the Debtor, who may stand in as a trustee under § 1303, under § 363(b) of the Bankruptcy Code subject to § 363(f) to sell property free and clear.

Relief Requested

15. The Debtor has obtained terms for the Loan Modification Agreement that:

- a. Capitalize the arrearages and late fees and penalties of \$24,337.21 into the new loan..
 - b. Reduce and fix the interest rate from 6.125% to 5.500%.
 - c. Maintain the original maturity date at December 1, 2036.
 - d. Increase the monthly payments marginally to \$3,581.56 a month from \$3555.07 a month (including escrow).
16. The Loan Modification Agreement is in the best interests of the Debtor's estate.

MARK JOSPEH CRISCUOLO
BY COUNSEL

/s/ James T. Tsai
Martin C. Conway (VSB No. 34334)
James T. Tsai (VSB No. 76141)
PESNER KAWAMOTO CONWAY, PLC
7926 Jones Branch Drive, Suite 930
McLean, VA 22102
(703) 506-9440 (telephone)
(703) 506-0929 (facsimile)

CERTIFICATE OF SERVICE

I certify that on December 30, 2009, I caused a copy of the foregoing to be sent to the following creditors and parties in interest by either CM/ECF or postal mail:

Thomas Gorman, Esq.
300 North Washington Street
Suite 400
Alexandria, VA 22314
Chapter 13 Trustee

Mark J. Criscuolo
14416 Clubhouse Road
Gainesville Rd, 20155
Debtor

Suntrust Mortgage Inc.
P.O. Box 100100
Atlanta, GA 30348
Creditor

/s/ Martin C. Conway
Martin C. Conway (VSB No. 34334)
James T. Tsai (VSB No. 76141)
PESNER KAWAMOTO CONWAY, PLC
7926 Jones Branch Drive, Suite 930
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